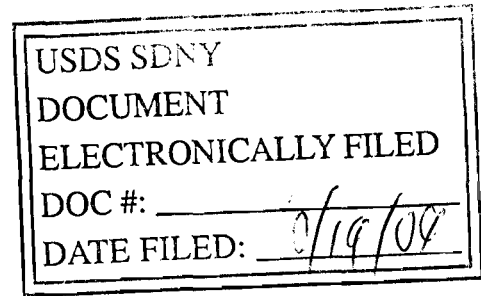


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



_____ x
EDMOND MALONE, individually and on behalf
of all other individuals similarly situated,

Plaintiff,

-against-

08 Civ. 3370 (CM)

TRI STATE LLC et al.,

Defendants.

_____ x

ORDER DIRECTING THE SENDING OF OPT-OUT NOTICE

McMahon, J.:

In response to the court's October 5, 2009 notice and request for information, plaintiff's counsel has provided the court with excerpts from the deposition testimony of defendants Matthew Prato and Gregg Prato, which reveal a conspicuous lack of record-keeping by defendants, and which also contain an admission that plaintiff performed a wide variety of tasks, including the work of a common laborer, despite his "technician" title. In view of this testimony, the court concludes that the most widespread notice possible should be given to potential members of an FLSA opt-out class at this preliminary stage of litigation. Plaintiff's request that opt-in notice be authorized for all employees of any of the defendant companies is granted. If it later proves that the authorized notice is overbroad, and that certain persons who received the notice are not similarly situated to plaintiff, we will take care of the problem at that time.

Therefore, for the reasons stated in the October 5, 2009 memorandum decision and in this order, plaintiff is authorized to send opt-in notice in the form previously approved (see October 5 memorandum) to all employees of defendants TriState LLC, Tri State Gate, LLC and Garon Fence Co., b/c/a Bedford Iron Works.

Dated: October 19, 2009

U.S.D.J.

BY ECF TO ALL COUNSEL